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Person To Contact:
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CC:CORP:BO2
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Date:
October 23, 2009

Legend:

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LLC 6 =

LLC 7 =

PS 1 =

PS 2 =

Shareholder Group =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Business A =

Business B =

Business C =

Business D =

Business E =

Business F =

Overlapping
Directors and
Officers =

A Agreements =

Adopted Strategy =

Unrelated
Distributing
Contributions =

Unrelated Sub 1
Dispositions =

Unrelated Sub 1
Distributions =

a =

b =

c =

d =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear _____ :

This letter responds to your August 6, 2009 letter requesting rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of Distributing, Controlled or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return (the "Distributing Group"). The authorized and outstanding capital stock of Distributing consists of two classes of common stock (the "Distributing Class A Stock" and the "Distributing Class B Stock," and collectively, the "Distributing Common Stock"). The Distributing Class A Stock is publicly traded and widely held. Based on publicly available securities information, only Shareholder A, Shareholder B, Shareholder C, Shareholder D, and Shareholder E held five percent or more of the Distributing Class A Stock on Date 1. Shareholder Group held all of the Distributing Class B Stock and less than a percent of the Distributing Class A Stock on Date 1. Distributing believes that Shareholder A, Shareholder B, Shareholder C and Shareholder E are U.S. persons and Shareholder D is not a U.S. person.

Distributing wholly owns Sub 1. Sub 1 wholly owns LLC 1. LLC 1 wholly owns LLC 2 and LLC 3. LLC 2 owns a portion of the LLC 4 interests, with LLC 3 owning the remaining interests. LLC 1 owns b percent of the interests of PS 1, with LLC 4 owning the remaining interests. PS 1 owns all of the stock of Controlled (which was formed in connection with the Proposed Transaction on Date 2) and Sub 2, and all of the interests in LLC 5. Sub 2 owns all of the stock of Sub 3. Sub 3 owns b percent of the interests of PS 2, with LLC 5 owning the remaining interests. PS 2 owns all of the interests of LLC 6. LLC 6 owns all of the interests of LLC 7.

Each of Distributing, Controlled and Sub 1 through Sub 3 is classified as a corporation for federal tax purposes under §§ 301.7701-2 and 3. Each of LLC 1 through LLC 7, and PS 1 is classified as an entity intended to be disregarded as separate from its owner for federal tax purposes under § 301.7701-3 (a “disregarded entity”). PS 2 is classified as a partnership for federal tax purposes under § 301.7701-3.

Distributing and the members of its “separate affiliated group” as defined in § 355(b)(3) (the “Distributing SAG”) directly engage in Business A (which is a segment of Business B), Business B, Business C and Business D. Financial information has been submitted indicating that Business A has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Prior to the Contribution (defined below), the Distributing SAG will have engaged in Business E, which is a segment of Business F. Prior to Date 3, the Distributing SAG engaged in Business E through Sub 1 by virtue of Sub 1’s ownership of LLC 6 through various disregarded entities, as described herein. On Date 3, PS 2 acquired all of the membership interests of LLC 6 (the “Business E Contribution”). After the Business E Contribution, Sub 1 directly owned through disregarded entities c percent of the outstanding partnership interests in PS 2. After the Contribution, Controlled and the members of its separate affiliated group (the “Controlled SAG”) will engage in Business E. Financial information has been submitted indicating that Business E has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Distribution is motivated, in whole or substantial part, by the following corporate business purposes (the “Corporate Business Purposes”):

- (i) to increase the aggregate value of the stock of Distributing and Controlled above the value of the stock that Distributing would have had if it had continued to represent an interest in both the businesses of Distributing and Controlled, so that following the Distribution each company can use its stock to pursue and achieve strategic objectives including evaluating and effectuating acquisitions, raising capital and increasing the long-term attractiveness of equity compensation programs in a significantly more efficient and effective manner with significantly less dilution to existing stockholders;
- (ii) to improve Distributing’s access to debt markets and lower its overall financing costs; and
- (iii) to provide Controlled with increased flexibility to fully pursue its business plan, including capital expenditures and acquisitions that would be more

difficult to consider or effectuate within Distributing in the absence of the Distribution.

Following the Distribution, the Overlapping Directors and Officers will provide services to both Distributing and Controlled. Also following the Distribution, Distributing and its affiliates, on the one hand, and Controlled and its affiliates, on the other hand, will have continuing relationships, including those established in connection with the Proposed Transaction related to transitional services, tax sharing and allocations, employee matters, A Agreements, and certain other continuing agreements (the “Continuing Agreements”). In addition, a note issued by LLC 1 to PS 2 (the “LLC 1 Note”) will remain outstanding following the Distribution in order to support near term liquidity for Distributing.

At the time of the Sub 1 Liquidation, Distributing expects to have outstanding a non-interest bearing intercompany balance owed to Sub 1, the balance of which was approximately \$d on Date 5 (the “Extinguished Note”).

Proposed Transaction

Distributing has proposed the following series of transactions (the “Proposed Transaction”):

- (i) Sub 1 converts to a limited liability company (“LLC 8”) that will be a disregarded entity (the “Sub 1 Liquidation”).
- (ii) LLC 2, LLC 3, and LLC 4 dissolve under state law.
- (iii) PS 1 contributes to Controlled all of the stock of Sub 2 and all of the membership interests of LLC 5 in exchange for Controlled Class A Stock and Controlled Class B Stock (such transaction, the “Contribution”), which constitutes all of the outstanding stock of Controlled (the “Controlled Stock”).
- (iv) PS 1 distributes all of the Controlled Stock to LLC 1.
- (v) LLC 1 distributes all of the Controlled Stock to LLC 8.
- (vi) LLC 8 distributes all of the Controlled Stock to Distributing.
- (vii) Distributing distributes all of the Controlled Class A Stock pro rata to the holders of Distributing Class A Stock with respect to their Distributing Class A Stock and the Controlled Class B Stock pro rata to the holders of the Distributing Class B Stock with respect to their Distributing Class B Stock (the “Distribution”).

Representations

The Contribution and Distribution

The following representations have been made regarding the Contribution and the Distribution:

- (a) Indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing in the Distribution will be received by a shareholder of Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Business A (as conducted by the Distributing SAG), represents the present operations of the business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted.
- (d) The five years of financial information submitted on behalf of Business E (as conducted by the Distributing SAG prior to the Contribution and the Controlled SAG after the Contribution), represents the present operations of the business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted. For purposes of this representation, the Business E Contribution and the Adopted Strategy are not considered substantial operational changes.
- (e) Following the Distribution, except with respect to the Overlapping Directors and Officers and as provided in the Continuing Agreements, the Distributing SAG will continue the active conduct of Business A, and the Controlled SAG will directly (and indirectly through PS 2) continue the active conduct of Business E independently and with their separate employees. For purposes of this representation, employees of PS 2 shall be deemed to be employees of the Controlled SAG.
- (f) Neither Business A conducted by the Distributing SAG nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed Treas. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG will have been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the Distribution.
- (g) Sub 1 (i) will have been a member of the Distributing SAG for a period in excess of five years as of the Sub 1 Liquidation and (ii) will have owned Business E (through disregarded entities) from the beginning of the five year period ending on the

date of the Distribution (the "Five Year Period") to the date of the Business E Contribution. PS 2 will have been wholly owned by the Distributing SAG for the entire period beginning on the date of the Business E Contribution through the date of the Contribution and will be wholly owned by the Controlled SAG from the date of the Contribution through the date of the Distribution. PS 2 will have owned Business E from the date of the Business E Contribution through the date of the Distribution. For the Five Year Period, the Distributing SAG and/or PS 2 will have been the principal owner of the goodwill and significant assets of Business E. Following the Distribution, the Controlled SAG and/or PS 2 will be the principal owner of the goodwill and significant assets of Business E.

(h) The Distribution is being carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or substantial part, by the Corporate Business Purposes.

(i) There is no plan or intention to (i) liquidate either Distributing or Controlled, (ii) sell or otherwise dispose of the assets of either corporation (except in the ordinary course of business and in the Proposed Transaction as described above), or (iii) merge either Distributing or Controlled with any other corporation, in each case, after the Proposed Transaction.

(j) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(k) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing in the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(l) The total adjusted basis and the fair market value of the assets transferred by Distributing to Controlled in the Contribution each will equal or exceed the sum of the total liabilities assumed (within the meaning of §357(d)) by Controlled (if any).

(m) Any liabilities assumed (within the meaning of § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets transferred to Controlled in connection with the Contribution.

(n) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.

(o) Other than (i) the LLC1 Note, (ii) payables with respect to the Continuing Agreements, and (iii) trade payables between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) created in the ordinary course of business, no intercorporate debt will exist between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or immediately following, the Distribution.

(p) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(q) Except for payments with respect to transitional services which are not expected to continue for a period to exceed two years, payments made in connection with the Continuing Agreements will be on terms intended to reflect those terms arrived at by parties negotiating at arm's length.

(r) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(s) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(t) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(u) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of either corporation).

(v) Immediately after the transaction (as defined in § 355(g)(4)), (i) any person that holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)) will have held such an interest in such corporation immediately before the transaction, or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(w) The payment of cash in lieu of a fractional share of Controlled stock is solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing and maintaining fractional shares and will not represent separately bargained for consideration. The total cash that will be paid in the transaction to any shareholder in lieu of a fractional share of Controlled stock will not exceed one percent of the total consideration that will be distributed in the transaction. Any fractional share interests of each Distributing shareholder will be aggregated and sold by an exchange agent on behalf of such shareholder, and it is intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled stock.

(x) Neither Distributing nor Controlled (i) was or will be a United States real property holding corporation (as defined in § 897(c)(2)) at any time during the five year period ending on the date of the Distribution, or (ii) will be a United States real property holding corporation immediately after the Distribution.

The Sub 1 Liquidation

The following representations have been made regarding the Sub 1 Liquidation. These representations are made by taking into account the disregarded status of Sub 1.

(y) Distributing, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will own 100 percent of the single outstanding class of Sub 1 stock.

(z) No shares of Sub 1 stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 1.

(aa) All distributions from Sub 1 to Distributing pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 1.

(bb) As soon as the first liquidating distribution has been made, Sub 1 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to Distributing.

(cc) Sub 1 will retain no assets following the final liquidating distribution.

(dd) Sub 1 will not have acquired assets in any nontaxable transaction at any time, except for (i) acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation, and (ii) the Unrelated Distributing Contributions.

(ee) No assets of Sub 1 have been, or will be, disposed of by either Sub 1 or Distributing, except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years prior to adoption of the plan of liquidation, (iii) the Unrelated Sub 1 Dispositions, and (iv) dispositions as part of the Proposed Transaction.

(ff) Except with respect to transactions comprising steps of the Proposed Transaction and transfers in the ordinary course of business, the liquidation of Sub 1 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (recipient) of any of the businesses or assets of Sub 1, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 1 stock also hold, directly or indirectly, more than 20 percent in value of the stock in recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rule of § 318(a) as modified by § 304(c)(3).

(gg) Prior to the adoption of the plan of liquidation, no assets of Sub 1 will have been distributed in kind, transferred, or sold to Distributing, except for (i) transactions occurring in the normal course of business, (ii) transactions occurring more than three years prior to adoption of the plan of liquidation, (iii) the Unrelated Sub 1 Distributions, and (iv) the Proposed Transaction.

(hh) Sub 1 will report all earned income represented by assets that will be distributed to Distributing, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(ii) The fair market value of the assets of Sub 1 will exceed its liabilities both at the date of adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.

(jj) There is no intercorporate debt existing between Distributing and Sub 1 and none has been cancelled, forgiven, or discounted, except for (i) transactions that occurred more than three years prior to the date of adoption of the plan of liquidation, and (ii) the Extinguished Note.

(kk) Distributing is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(ll) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Liquidation have been fully disclosed.

(mm) The adjusted issue price of the Extinguished Note is equal to Sub 1's basis in the Extinguished Note.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Proposed Transaction:

The Distribution and Contribution

(1) The Contribution and the Distribution, taken together, will qualify as a reorganization described in § 368(a)(1)(D). Each of Distributing and Controlled will be a "party to the reorganization" within the meaning of § 368(b).

(2) No gain or loss will be recognized by Distributing on the Contribution. §§ 357(a) and 361(a).

(3) No gain or loss will be recognized by Controlled as a result of the Contribution. § 1032(a).

(4) Controlled's basis in each asset received in the Contribution will be the same as the basis of that asset in the hands of Distributing immediately before its transfer. § 362(b).

(5) Controlled's holding period in each asset received in the Contribution will include the period during which Distributing held the asset. § 1223(2).

(6) No gain or loss will be recognized by Distributing on the Distribution. § 361(c).

(7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholders upon their receipt of the Controlled stock in the Distribution. § 355(a).

(8) Each Distributing shareholder's basis in a share of Distributing common stock (as adjusted under Treasury Regulation § 1.358-1) will be allocated between the share of Distributing common stock with respect to which the Distribution is made and the share of Controlled stock (or allocable portions thereof) received with respect to the share of Distributing common stock in proportion to their fair market values.

(9) Each Distributing shareholder's holding period in the Controlled stock received will include the holding period of the Distributing common stock with respect to which the distribution of the Controlled stock is made, provided that the Distributing common stock is held as a capital asset on the date of the Distribution. § 1223(1).

(10) Earnings and profits (if any) will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).

(11) A Distributing shareholder that receives cash in lieu of a fractional share of Controlled stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above in Ruling (8), and the amount of cash received. § 1001. Any gain or loss will be treated as capital gain or loss, provided the fractional share of stock is held as a capital asset on the date of the Distribution. §§ 1221 and 1222.

(12) Immediately following the Distribution, Controlled will not be a successor to Distributing for purposes of § 1504(a)(3); therefore Controlled and its direct and indirect subsidiaries that are “includible corporations” (under § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled as the common parent immediately following the Distribution.

(13) Except insofar as it may be relevant to § 355(g), any Indemnity Payments made by Distributing to Controlled, or vice versa, that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning on or before and ending after the Distribution and (ii) will not have become fixed and ascertainable until after the Distribution will be treated as occurring immediately before the Distribution (see *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

The Sub 1 Liquidation

(14) The Sub 1 Liquidation will qualify as a complete liquidation under § 332. § 332(b) and § 1.332-2(d).

(15) No gain or loss will be recognized by Distributing on its receipt of Sub 1's assets and the assumption of Sub 1's liabilities. § 332(a).

(16) No gain or loss will be recognized by Sub 1 on the distribution of its assets to, and the assumption of its liabilities by, Distributing. §§ 336(d)(3) and 337(a).

(17) Distributing's basis in each asset received from Sub 1 in the Sub 1 Liquidation will be the same as the basis of that asset in the hands of Sub 1 immediately before the Sub 1 Liquidation. § 334(b)(1).

(18) Distributing's holding period in each asset received from Sub 1 in the Sub 1 Liquidation will include the period during which that asset was held by Sub 1. § 1223(2).

(19) Distributing will succeed to and take into account as of the close of the effective date of the Sub 1 Liquidation the items of Sub 1 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder. § 381(a) and § 1.381(a)-1.

(20) The excess loss account of Distributing with respect to the stock of Sub 1 will be eliminated without the recognition of gain as a result of the Sub 1 Liquidation. § 1.1502-19(b)(2).

(21) Distributing will not realize income under § 61(a)(12) or § 1.301-1(m) of the regulations with respect to the extinguishment of its intercompany balance in the Sub 1 Liquidation. Rev. Rul. 74-54, 1974-1 C.B. 76.

Caveats

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, we express no opinion regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); and
- (iii) Whether any distribution described above and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

Procedural Statements

This ruling letter is directed only to the taxpayers who requested it. § 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions described herein are completed. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its federal income tax return that sets forth the date and control number of this ruling.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Corporate)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: